Crown Textile Company *and* Union of Needletrades, Industrial and Textile Employees

Specialty Textile Products, Inc. *and* Union of Needletrades, Industrial and Textile Employees. Cases 10–CA–29382 and 10–CA–29886

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On February 13, 1998, Administrative Law Judge Robert C. Batson issued the attached decision. The General Counsel and the Charging Party each filed exceptions and supporting briefs, and the Respondents filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

1. The judge dismissed allegations that the Respondent Specialty Textile Products, Inc. (STP) violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union. The General Counsel and Charging Party except, inter alia, to the judge's dismissal of this allegation. For the reasons set forth below, we reverse the judge's decision and find that STP unlawfully refused to bargain with the Union.[1]

In *St. Elizabeth Manor, Inc*., 329 NLRB 341 (1999), the Board adopted a "successor bar" rule, which precludes petitions challenging a union's majority status for a reasonable period after a successor employer's obligation to recognize an incumbent union is triggered. Specifically, the Board held:

> [O]nce a successor's obligation to recognize an incumbent union has attached (where the successor has not adopted the predecessor's contract), the union is entitled to a reasonable period of bargaining without challenge to its majority status through a decertification effort, an employer petition, or a rival petition.[8]

Id. at 344.[2]

It is undisputed that STP is a successor to Crown under *Burns International Security Services*, 406 U.S. 272 (1972). STP purchased plants 1 and 3 from Crown and Crown's operations ceased on October 15, 1996.[3] On October 16, STP took over the operations with the same employees and supervisors as had been employed by Crown. STP produced essentially the same products, which were sold to the same customers. There was no hiatus in operating the business. The judge specifically found that it is "abundantly clear that STP became a legal successor to Crown," and there is no exception to that finding.

Manifestly, STP's obligation to recognize and bargain with the Union had attached when it refused to bargain. Both predicate events required by *St. Elizabeth Manor* to establish a bargaining obligation had transpired. First, there is no dispute that STP employed a substantial and representative complement of employees immediately upon beginning to operate the business. Second, on October 29, the Union demanded recognition and requested to bargain with STP concerning the employees' terms and conditions of employment.

STP refused to bargain with the Union, asserting that it had a good-faith doubt about the Union's majority status. STP relied on a petition it received on October 24 or 25 stating that the bargaining unit employees did not want union representation by the Union or any other labor organization. The petition was signed by a majority of the bargaining unit employees.

[1] The judge also dismissed the complaint allegation that the Respondent Crown violated Sec. 8(a)(5) of the Act by unilaterally changing the contractual vacation pay policy. The General Counsel and the Union have excepted to this dismissal.

In the unique circumstances of this case, we find it unnecessary to pass on the judge's dismissal of the Sec. 8(a)(5) unilateral change allegation against Respondent Crown. These circumstances include the fact that Crown has gone out of business. Further, Crown has, in fact, paid the affected employees all monies they were owed under the contractual vacation pay policy, and, therefore, the General Counsel seeks to impose no monetary liability for this alleged unfair labor practice against either Crown or STP. Thus, we believe it serves no purpose to engage in an analysis of an essentially academic issue.

[2] The effect of the Board's decision was to return to the principle expressed in *Landmark International Trucks*, 257 NLRB 1375 (1981), enf. denied 699 F.2d 815 (6th Cir. 1983), that a successor employer violates Sec. 8(a)(5) if it withdraws recognition before a reasonable period of time for bargaining has elapsed, whether that withdrawal is based on a good-faith doubt of the union's continuing majority status or evidence of actual loss of majority status. See *St. Elizabeth Manor*, supra at 342. Accordingly, the contrary view, as expressed in *Harley-Davidson Transportation Co.*, 273 NLRB 1531 (1985), is clearly no longer good law after *St. Elizabeth Manor*.

[3] All dates hereafter will be in 1996, unless otherwise specified.

[8] In the successorship situation, the successor employer's obligation to recognize the union attaches after the occurrence of two events: (1) a demand for recognition or bargaining by the union; and (2) the employment by the successor employer of a "substantial and representative complement" of employees, a majority of whom were employed by the predecessor. See *Royal Midtown Chrysler Plymouth*, 296 NLRB 1039, 1040 (1989). Thus, because the employer's obligation to recognize the union commences at that time, as soon as those two events have occurred, the bar to the processing of a petition or to any other challenge to the union's majority status begins, whether or not the employer has actually extended recognition to the union as of that time.

STP was not, however, privileged to rely on that employee petition in refusing to bargain with the Union, based on the "successor bar" rule enunciated in *St. Elizabeth Manor*.[4] Inasmuch as STP's obligation to bargain with the Union attached when the Union demanded recognition and bargaining, STP was precluded thereafter from withdrawing recognition, by operation of the successor bar, before a "reasonable period of time" had elapsed. During this insulated period, there can be no challenge to a union's representational status in order to afford the parties and the employees a period of stability to develop their bargaining relationship without interruption.[5] Accordingly, we find that STP violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from and refusing to bargain with the Union.[6]

Our dissenting colleague claims that we have not correctly applied the *St. Elizabeth Manor* successor-bar rule to the facts of this case. He reads that decision to hold that a decertification effort is barred if it occurs after the obligation to recognize is triggered, but it is timely if it occurs before that time. We reject the dissent's gloss on *St. Elizabeth Manor*.

The successor-bar doctrine, as articulated in that decision, is based on the need to provide employees with a reasonable opportunity to determine whether the incumbent union will be effective in representing them in negotiations with the successor. That rationale applies regardless of whether a decertification effort by employees is initiated before or after the union has made a formal demand for recognition from the successor. In either situation, the effort occurs in the stressful transitional period, after a successor employer has taken over the business, and during which the bargaining relationship should be insulated from challenge so employees may fairly evaluate the union's effectiveness.[7]

Our dissenting colleague's emphasis on the timing of the employee petition is particularly misplaced here, since it is undisputed that STP had publicly announced that it "would be open to negotiations" with the union shortly *before* the petition was received and *before* the Union had demanded bargaining. As a practical matter, then, STP assumed a bargaining demand, effectively recognized the Union, and then withdrew recognition, once the Union had made a formal demand, in the wake of the employee petition. On that view, of course, even the dissent should acknowledge that the successor-bar rule applies here.[8]

In any case, nothing in either the language or the reasoning of *St. Elizabeth Manor* supports the dissent's notion that the successor's receipt of an employee petition before a bargaining demand is made somehow preempts application of the successor-bar rule. What triggers the successor bar is the hiring of the requisite employee complement and a demand for bargaining. Both of these triggering events occurred here.

That an employee petition intervened between the two events is immaterial, given the nature of the successor-bar rule, which forecloses decertification efforts for a reasonable period of time. There can be no suggestion here that the Union effectively abandoned its representational rights by delaying its demand. Nor was the Union required to win a race to the employer by making a demand before the employee petition was received, especially in light of the employer's prior announcement that it would recognize the union. Finally, even following the dissent's formalistic approach, it is not clear how the petition could operate to relieve STP of a duty that it had not yet incurred. In sum, we have applied *St. Elizabeth Manor* here in a way that is both formally correct and practically sound.

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[4] For the reasons set forth in the majority opinion in *St. Elizabeth Manor, Inc.*, we reject our dissenting colleague's criticisms of the successor bar doctrine, including his discussion of *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987).

[5] It is clear in this case that a reasonable period had not elapsed at the time of the refusal to bargain because negotiation sessions had not even been scheduled. After a reasonable period of time elapses, the employees will have an opportunity to change or eliminate their bargaining representative, if they so choose. *St. Elizabeth Manor*, supra at 345.

[6] Inasmuch as we have found STP to be a successor under *Burns* required to recognize and bargain with the Union, and as the General Counsel does not claim that STP is obligated to remedy any unfair labor practices that may have been committed by Crown, we find it unnecessary to determine whether STP was also a successor to Crown under *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

[7] In claiming that our decision today is inconsistent with the "precise wording" of fn. 8 of *St. Elizabeth Manor*, the dissent focuses narrowly on that brief footnote and fails to evaluate it in the context of the entire decision. The facts of *St. Elizabeth Manor* showed that the successor employer actually recognized the Union, held three bargaining sessions over a 3-month period, and then filed an RM petition. 329 NLRB at 341. Fn. 8 states the successor-bar rule broadly, to cover not only the somewhat unusual facts of *St. Elizabeth Manor*, but also the more typical situation where the successor employer never recognized the union. Nothing in the footnote limits the underlying rationale of the decision. Nor do we discern how the dissent's formalistic approach—which places critical importance on whether the employee decertification effort precedes or follows the union's demand for recognition—furthers the policies of the Act, consistent with *St. Elizabeth Manor*.

[8] Our dissenting colleague claims that there is "no basis" for our reading of STP's announcement. We disagree. First, the judge found, without exception, that STP "published an article in the Talladega, newspaper [stating] that it would bargain with the Union." Second, STP's answering brief contains a section entitled, "Respondent STP's Managers Publicly Announced The Company's Willingness To Negotiate With Charging Party," which states, inter alia, that on "October 21, 1996, Respondent STP's management publicly announced that it was willing to meet and negotiate with Charging Party." Thus, we conclude that STP's admitted willingness to enter into negotiations with the Union constitutes an implicit recognition of the Union.

2. For the reasons fully set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In the *Vincent* case, the court summarized the court's law as requiring that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' §7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Id. at 738.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the employer's withdrawal of recognition. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, ordering the successor employer to bargain for a reasonable period of time with the incumbent union, as in this case, serves "to protect the newly established bargaining relationship and the previously expressed majority choice, taking into account that the stresses of the organizational transition may have shaken some of the support the union previously enjoyed." *St. Elizabeth Manor*, supra at 345. By the time STP took over Crown's operations, the STP employees had endured approximately 5 years of financial difficulties with Crown, during which time the future of the business and their job security were uncertain.[9] Circumstances such as these, in which the employees' anxiety about their status with STP could have led to their disaffection before the Union had the opportunity to demonstrate its continued effectiveness, could tempt a reluctant successor employer to postpone its statutory bargaining obligation indefinitely. Ibid. To require bargaining to continue only for a reasonable period of time, not in perpetuity, fosters industrial peace and stability and will ensure that the bargaining relationship established between STP and the Union will have a fair chance to succeed. Id. at 346.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair in circumstances such as those here, where litigation of the Union's charges took several years and the Respondent's unfair labor practice was of a continuing nature and was likely to have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.

ORDER

The National Labor Relations Board orders that the Respondent, Specialty Textile Products, Inc., Talladega, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[9] Indeed, in April 1993, Crown employed 417 bargaining unit employees; by mid-October 1996 when STP began operating, the workforce had decreased to 27 employees.

(a) Unlawfully withdrawing recognition from Union of Neeedletrades, Industrial and Textile Employees, the Union, and refusing to bargain with it as the exclusive collective-bargaining representative of the employees employed in the unit described below in paragraph 2(a).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All regular full-time hourly production and maintenance employees employed by the Company at its manufacturing facilities located in Talladega, Alabama. Excluded from the bargaining unit are all other employees, including but not limited to all office and clerical employees; all sales employees; all temporary employees (i.e., those who are hired to work for a limited duration, not to exceed six (6) months in any calendar year); all part-time employees (i.e., those normally and regularly employed for less than thirty-two (32) hours per week); all employees employed by the Company at its other facilities; leadmen; truck drivers; managerial, confidential, professional, and technical employees; and guards and supervisors as defined in the National Labor Relations Act, as amended.

(b) Within 14 days after service by the Region, post at its Talladega, Alabama facilities copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 29, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

CHAIRMAN HURTGEN, dissenting in part.

I agree with my colleagues that it would not effectuate the purposes of the Act to proceed on the unfair labor practice allegation against Respondent Crown. I further agree that, in these circumstances, it is unnecessary to pass on the *Golden State*[1] successor issue.

However, I disagree with my colleagues' reversal of the administrative law judge's conclusion that Respondent Specialty Textile Products (STP) did not violate Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union.

The facts of this case are as follows. On October 15, 1996,[2] STP purchased two plants from Respondent Crown Textile Company (Crown). On October 16, STP took over the operations at those plants. On October 24 or 25, STP received a petition, signed by an overwhelming majority of the bargaining unit employees, stating that the bargaining unit employees did not want representation by the Union or any other labor organization. On October 29, the Union demanded recognition and requested bargaining with STP concerning the employees' terms and conditions of employment. After receiving the Union's request, STP refused to recognize or bargain with the Union based on the employees' petition.

In reversing the judge and concluding that STP violated the Act, the majority finds that the "successor bar" rule enunciated in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999), precluded STP from refusing to bargain with the Union. I do not subscribe to the Board's decision in *St. Elizabeth Manor*, a case from which I dissented.

The Board in *St. Elizabeth Manor*, and as extended in *Inn Credible Caterers*, 330 NLRB 691 (2001),[3] found that once a successor's duty to bargain attaches, and for a reasonable period of time thereafter, there can be no challenges to the union's majority status. Thus, the Board transformed what had been a rebuttable presumption of the union's continued majority status into an irrebuttable presumption. Applying that rationale here, the Board forecloses STP from relying on a petition by an overwhelming majority of employees indicating that they no longer wish to be represented by the Union or any

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

[2] All dates are in 1996.

[3] For the reasons stated in my concurring opinion in *Inn Credible Caterers*, I do not support the extension and application of *St. Elizabeth Manor* to the unfair labor practice context.

other labor organization. The petition provides substantial objective evidence of a good-faith uncertainty about the Union's majority support.[4] Nevertheless, the majority forecloses the employees from exercising their Section 7 right to select a union representative or to have no union represent them, and the majority forecloses STP from relying on such evidence in refusing to recognize and bargain with the Union. The majority reaches this conclusion despite the Supreme Court's finding in *Fall River Dyeing v. NLRB*, 482 U.S. 27, 41 fn. 8 (1987), that the successor retains the ability to lawfully withdraw recognition if it could show that the union had in fact lost its majority status at the time of the refusal to bargain or that the refusal to bargain was grounded on a good-faith uncertainty, based on objective factors, that the union continued to command majority support. Under *Fall River*, employees who no longer want to be represented by the union may so inform the successor, and the successor may consider that as grounds for a good-faith uncertainty. That employee right, pronounced by the Supreme Court, has been foreclosed by *St. Elizabeth Manor* and the majority here.

In my view, consistent with *Fall River*, the Union no longer maintained majority support (or at least there was uncertainty on this issue) by the time it requested recognition and bargaining. Therefore, STP did not violate the Act by thereafter refusing to recognize and bargain.

Moreover, even assuming I subscribed to the rule as described in *St. Elizabeth Manor*, I would uphold the judge's dismissal of the allegation that STP violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union.

The Board held in *St. Elizabeth Manor* that the successor bar applies once a successor's obligation to recognize an incumbent union has attached. With respect to when such attachment occurs, the rule in *St. Elizabeth Manor* was correctly stated as follows:

> [O]nce a successor's obligation to recognize an incumbent union has attached (where the successor has not adopted the predecessor's contract), the union is entitled to a reasonable period of bargaining without challenge to its majority status through a decertification effort, an employer petition, or a rival petition.[8]

[8] In the successorship situation, the successor employer's obligation to recognize the union attaches after the occurrence of two events: (1) a demand for recognition or bargaining by the union; and (2) the employment by the successor employer of a "substantial and representative complement" of employees, a majority of whom were employed by the predecessor. See *Royal Midtown Chrysler Plymouth*, 296 NLRB 1039, 1040 (1989). Thus, because the employer's obligation to recognize the union commences at that time, as soon as those two events have occurred, the bar to the processing of a petition or to any other challenge to the union's majority status begins, whether or not the employer has actually extended recognition to the union as of that time.

329 NLRB at 344. See also *Fall River*, 482 U.S. at 52 ("The successor's duty to bargain at the 'substantial and representative complement' date is triggered only when the union has made a bargaining demand.") Thus, *St. Elizabeth Manor* creates an irrebuttable presumption of the union's continued majority status only after those two events have occurred.

Here, before ever receiving any demand from the Union, STP received a petition signed by 25 of the 27 bargaining unit employees indicating that they did not want representation by the Union or any other labor organization. At the time the petition was presented and received by STP, STP had received no demand for recognition or bargaining from the Union.

As noted, I dissented in *St. Elizabeth Manor*. I did so because of its effect on Section 7 rights. However, as discussed below, the employee petition herein was timely *even under St. Elizabeth Manor*. The response of my colleagues is to change the *St. Elizabeth Manor* rule to make it even more restrictive.

Under *St. Elizabeth Manor*, an employee petition is not cognizable if it arises after the duty to bargain has attached. And, under *St. Elizabeth Manor*, the duty to bargain attaches when a substantial and representative complement has been hired *and* a demand for recognition has been made. In the instant case, the demand for recognition was not made until October 29. Thus, the employee petition of October 24 or 25 was timely.

My colleagues abandon the distinction between petitions dated before the duty to bargain attaches and those dated after. They assert that the employees' decertification efforts are untimely irrespective of whether they occur before or after the commencement of the duty to bargain. As discussed above, this is contrary to the precise wording of *St. Elizabeth Manor*.[5]

That is, *St. Elizabeth Manor* supports giving effect to the employees' petition when no demand for recognition has yet been made. Where, as here, the petition is filed before the demand for recognition, the only element pre-

[4] The record contains insufficient evidence to demonstrate a causal relationship between the alleged unfair labor practice committed by Respondent Crown several months earlier and the petition.

[5] My colleagues say that my approach is "formalistic." I have simply relied upon *their* language in *St. Elizabeth Manor*, which language was stated as a general rule to cover "the successorship situation." My colleagues now modify their own rule. Similarly, my colleagues say that I have placed "critical importance" on the timing of the employee decertification effort. However, the whole point of *St. Elizabeth Manor* is to render untimely that effort.

sent at that time is the existence of a substantial and representative complement. For my colleagues, that element alone is now enough to bar the petition. Phrased differently, the petition in order to be timely must be filed *before* a *substantial and representative complement of employees is hired*. To say the least, this is a very odd notion. It is also contrary to *St. Elizabeth Manor*. As discussed, *St. Elizabeth Manor* required two elements to bar the petition, viz. the requisite complement of employees *and* the demand for recognition.

In view of the language of *St. Elizabeth Manor*, my colleagues next try to show that the demand for bargaining occurred on October 22, i.e., before the employee petition of October 24, 1996. This contention is based on an announcement in a newspaper article. In this regard, my colleagues say that Respondent "published an article in the Talladega, newspaper [stating] that it would bargain with the Union." The article in question was written by a newspaper reporter. The article said that "Peters [Respondent agent] said he has had no formal contact from UNITE, the union which previously had a contract with Crown. S[TP] officials [] do not recognize the contract the union had with Crown, but Peters said company leaders would be open to negotiations with the union." My colleagues treat the announcement as a recognition of the Union, and they state that Respondent STP "assumed" the Union had made a bargaining demand. I find no basis for the majority's reading of the announcement, particularly because STP specifically noted therein that it had *not* yet heard from the Union. Clearly, STP did not treat the Union as having made a bargaining demand. Rather, STP merely announced its willingness to comply with the law should the legal requirements regarding a bargaining obligation be met. Thus, nothing in STP's announcement obviated the need for the Union to make a timely demand for recognition in order to foreclose decertification efforts for a reasonable period of time.

In the circumstances here, STP's refusal to recognize and bargain, in the face of evidence demonstrating good-faith doubt as to the Union's continued majority status, was not violative of the Act. To find otherwise disregards the employees' Section 7 freedom of choice. It also applies the successor-bar rule to a situation where the conditions reaffirmed by *St. Elizabeth Manor* were not met.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT unlawfully withdraw recognition from Union of Neeedletrades, Industrial and Textile Employees, and unlawfully refuse to bargain with it as the exclusive collective-bargaining representative of the employees employed in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All regular full-time hourly production and maintenance employees employed by us at our manufacturing facilities located in Talladega, Alabama. Excluded from the bargaining unit are all other employees, including but not limited to all office and clerical employees; all sales employees; all temporary employees (i.e., those who are hired to work for a limited duration, not to exceed six (6) months in any calendar year); all part-time employees (i.e., those normally and regularly employed for less than thirty-two (32) hours per week); all employees employed by the Company at its other facilities; leadmen; truck drivers; managerial, confidential, professional, and technical employees; and guards and supervisors as defined in the National Labor Relations Act, as amended.

SPECIALTY TEXTILE PRODUCTS, INC.

Andrew Brenner, Esq., for the General Counsel.

Townsell G. Marshall, Esq. and *Michael D. Giles, Esq. (Constangy, Brooks & Smith LLC,)* of Birmingham, Alabama, for Respondent, Crown Textile Company.

David Hodges, Esq. (The Ford Law Firm,), of Birmingham, Alabama, for Respondent, Specialty Textile Products, Inc.

Harris Raynor, Union of Needletrades, Industrial and Textile Employees, AFL–CIO, of Union City, Georgia, for the Union.

DECISION

STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. These cases consolidated for trial was heard by me on June 18, 1997, in Birmingham, Alabama. Based upon charges filed by the Union of Textile Needletrades, Industrial and Textile Employees,[1] filed charges against Crown Textile Company, Inc., on June 14, 1996, in Case 10–CA–29382. The Union thereafter filed charges against Specialty Textile Products, Inc.,[3] on January 16, 1997, in Case 10–CA–29886. An Order consolidating cases, consolidating complaint, and notice of hearing issued March 18, 1997, alleging violations of Section 8(a)(1) and (5) of the Act (GC Exhs. 1(a) through 1(m)).

1. The issue presented is whether Respondent Crown violated Section 8(a)(5) and (1) of the Act by unilaterally changing its vacation pay policy without bargaining with the Union.

2. Whether Respondent STP is the legal successor to Crown Textile Company.

3. Whether Respondent STP as the successor to Crown Textile Company violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union.

Charges in the complaint and notice of hearing were served upon all parties.

1. I find herein that Respondent Crown did not violated Section 8(a)(5) and (1) of the Act by unilaterally changing its vacation pay policy without bargaining with the Union.

2. Respondent Specialty, or STP, is the legal successor to Crown Textile Company.

3. Respondent Specialty, or STP, as the successor to Crown did not violate Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union.

On March 18, 1997, the Regional Director issued an Order Consolidating Cases 10–CA–29382 and 10–CA–29886 in a consolidated complaint and notice of hearing.

In paragraphs 9 through 11 of the complaint, the General Counsel alleges that on or about May 10, 1996, Respondent Crown altered the schedule for payment of vacation pay for unit employees without bargaining with the Charging Party (Union) over those changes or the effects of those changes. The General Counsel further alleges that by the conduct described in paragraphs 9 through 11 Respondent Crown failed and refused to bargain collectively and in good faith with the Union and thereby violated Section 8(a)(1), (5) and Section 8(d) of the Act.

There are no crucial issues of fact for which credibility resolutions must be made to resolve the issues raised by this complaint.

All parties were afforded full opportunity to call and examine and cross-examine witnesses and to present all relevant evidence, and file posttrial briefs. Based upon my observations of the demeanor of witnesses while testifying under oath and the briefs which were filed by Crown Textile Company, Specialty Textile Products, Inc., Union of Needletrades, Industrial and Textile Employees, and the counsel for the General Counsel, I make the following

[1] Hereinafter referred to as Union or UNITE.

[3] Hereinafter referred to as STP or Respondent STP.

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the answer admits that Respondent Crown Textile Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint alleges and the answer admits that Specialty Textile Products, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is further alleged that the Amalgamated Clothing & Textile Workers Union (ACTWU) is a labor organization within the meaning of Section 2(5) of the Act and is the predecessor to the Charging Party herein. The complaint alleges, the answer admits, and the evidence establishes that Union of Needletrades, Industrial and Textile Employees (UNITE) is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTUAL BACKGROUND

A. Crown Textile Company

Respondent Crown was a vertically integrated manufacturer of woven, nonwoven, and wuft insertion at interfacings for use in men's and women's apparel, as well as knitted fabric for women's apparel that began operations in Talladega, Alabama, in 1964 (Jt. Exh. 2).

It is admitted that Respondent Crown suffered economic problems in the early 1990s. In 1992, ACTWU (the predecessor of Charging Party) began an organizing campaign at Respondent Crown's Talladega, Alabama facilities and on October 7, 1992, ACTWU filed a petition for an election in Case 10–RC–14299 (Jt. Exh. 2). Respondent Crown and ACTWU entered into a stipulated election agreement for an election to be held on November 19, 1992, among "all full time and regular part time production and maintenance employees including plant clerical employees employed by Respondent Crown at its plants 1, 2, 3, and 4 located in Talladega County, Alabama, but excluding all office clerical employees, technical employees, lead persons, confidential employees, professional employees, guards and supervisors as defined in the Act. At this time, October 7, 1992, the unit consisted of approximately 450 employees. (Jt. Exh. 2)

On November 13, 1992, ACTWU filed charges in Case 10–CA–26357 which blocked the election. Those charges were withdrawn on December 23, 1992, however, unfair labor practice charges in Case 10–CA–26451 had been filed on December 22, 1992, which continued to block the election. A complaint was issued in Case 10–CA–26451 on February 8, 1993.

During the interim Respondent Crown's economic misfortunes continued and, as a result Respondent Crown's owners offered the Company for sale. This decision was made in order to obtain infusion of capital for Respondent Crown to continue operations and absent the sale it had become apparent that Crown would probably close. At about this time Crown entered into negotiations for the sale of the business with Heller Equity Capitol Corporation of Chicago, Illinois. During negotiations for the sale of Respondent Crown, Heller became aware of the labor relations situation at Crown and would not proceed with the sale unless the labor relations situation was resolved. In order to resolve this issue Crown agreed to voluntary recog-

nition of ACTWU if they could demonstrate that they represented a majority of the bargaining unit employees.

To resolve this issue Crown called a meeting at a local movie theater in Talladega, Alabama, on April 6, 1993, where at representatives of Crown, Heller, and ACTWU spoke to employees. The employees were informed by Heller representatives that Respondent Crown had financial difficulties and had offered the company for sale; that if it was not sold, that it might mean liquidation of the company; and that Heller wished to purchase the company, but outstanding labor relations situations had to be resolved. A representative of ACTWU also spoke to Respondent Crown's employees at that meeting. The ACTWU representative reinforced Heller's warning about the possible outcome for employees if the sale to Heller did not go through and the need to settle the labor unrest in order for that to happen.

Following this meeting Crown allowed ACTWU representatives access to its breakrooms to meet with employees to, among other things, obtain signed union membership cards. Thereafter ACTWU and Heller requested that the State of Alabama, Department of Labor, conduct a card check and signature of verification of union membership cards to determine whether ACTWU represented a majority of Respondent Crown's employees. This card check took place on April 14, 1993, at the department facilities in Montgomery, Alabama, at the time of the card check there were 417 employees in the designated unit. A total of 311 membership cards were presented to the department representative and after examining the cards it was declared that 274 of the cards were valid and that the ACTWU (now UNITE) had been designated by a majority of employees in the unit. On April 15, 1993, Respondent Crown's employees ratified a collective-bargaining agreement between Respondent Crown and the Amalgamated Clothing and Textile Workers Union which became effective on May 6, 1993.

Thereafter the Amalgamated Clothing and Textile Workers Union requested withdrawal of the unfair labor charges in Case 10–CA–26451 which was approved by the Regional Director for Region 10 on May 6, 1993, and the sale of Respondent Crown to Heller was closed.

However, Crown's business continued to endure economic problems during the next several years and closed its plant 4 and moved its cutting operations to plant 1 during the last week of May 1995. After Heller's purchase of Respondent Crown the employee complement dropped from 400 plus employees in 1993 to 268 employees as of the week ending January 7, 1996. On January 2, 1996, Respondent Crown filed for Bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division.

After Crown filed Bankruptcy its business continued to decline and during the week of September 3, 1996, Respondent Crown stopped production at plant 2, and as of the week ending October 6, Respondent Crown employed only 15 employees at plant 1 and 35 employees at plant 3, and finally on October 15, 1996, Specialty Textile Products, Inc. (STP) purchased plants 1 and 3 from Respondent and Respondent Crown's manufacturing operations ceased. STP began, or continued the operations, on October 16, 1996.

B. Specialty Textile Products, Inc.

Respondent STP admits that it continued operations at plants 1 and 3 with the same employees and supervisors as had been employed by Respondent Crown. STP produced essentially the same materials sold to the same customers, hired the same employees and supervisors, as had been employed by Crown. There was no hiatus in the operation of the business.

It is abundantly clear that STP became a legal successor to Crown under the criterion set forth in *Fall River Dying Corp. v. NLRB*, 482 U.S. 27, 43 (1987), wherein the Supreme Court set out the test to determine whether a substantial continuity of identity is present:

> Whether the business of both employers is essentially the same and whether the employees in the new company are doing the same jobs in the same working conditions under the same supervisors and whether the new entity has the same production process, produces the same products and basically has the same body of customers.

Since no one factor in determinative the totality of the circumstances must be examined in order to decide whether an employer is the successor to a predecessor's bargaining obligation. Respondent STP satisfies all of the *Fall River* criteria and continues as the employing entity and thus a legal successor to Crown.

While many other cases could be cited, in this case the evidence is so clear that it is unnecessary to go through the *Burns Security Services*, 406 U.S. 272 (1972), case and its prodigy, particularly when its compared with *Capital Steel & Iron Co.*, 299 NLRB 484, 487 (1990). Thus there is no serious contention that STP is not a successor to Crown and thus responsible for Crown's bargaining obligations with the Union.

III. ALLEGED UNFAIR LABOR PRACTICES ALLEGEDLY COMMITTED BY CROWN

As indicated above on October 15, 1996, Respondent STP purchased certain assets of Crown including its plant 3 in Talladega, Alabama and all of the equipment and inventory for that plant, but not Respondent Crown's receivable. Additionally STP bought another facility in Talladega from Respondent Crown which has been referred to as plant 1 and is located adjacent to and uses small tools and equipment from Respondent's other plants. However, production by Crown in plant 1 was not purchased by STP when it purchased the building in early November 1996.

As noted, there is no issue that STP is a successor to Crown, therefore as a successor it may not, without affirmative proof, show that it was not aware of any unfair labor practices of Crown prior to its successorship. The evidence is mixed as to whether STP was aware of Crown's alleged unfair labor practices.

The practice by Crown before and after it entered into an agreement with UNITE and its predecessor was to permit employees with more than 10 years seniority, and thus, entitled to three weeks vacation to *request* that they be paid for the third vacation week in lieu of taking vacation. This practice was incorporated into the agreement in part and provided that the vacation year commenced with the last full pay period prior to June

30, the following year. The eligible employees could not request this pay in lieu of vacation prior to the third week in January.

As noted, Crown filed for Bankruptcy on January 2, 1996, at which time it employed 15 employees in plant 1 and 35 employees in plant 3. STP bought the assets and continued to operate the 2 plants with 27 employees.

Shortly after STP began operations UNITE made a demand that it bargain with UNITE as a successor employer. A short time later STP published an article in the Talladega newspaper that it would bargain with the Union.

Prior to scheduling a bargaining date an admitted unit employee, Ronald Roberts, circulated a petition which was signed by 25 of the 27 employees stating they did not want UNITE or any other union to represent them. (R-STP-1) as a result this was filed as an RD Petition to decertify the Union.

Upon receipt of this Petition STP stated that they had a reasonable doubt as to the Union's continued majority status and refused to bargain. This action brought about the relevant charges herein.

The Government and the Union contend that STP cannot raise a question concerning representation, or majority status, during the pendency of alleged unremedied unfair labor practices against its predecessor.

The complaint alleges that Respondent Crown altered the schedule of vacation pay for unit employees without bargaining with the Union over those changes or the efforts of such changes.

This allegation is not borne out by the evidence. The Union was well aware that the employer was in precarious financial circumstances at this time. The CEO or plant manager immediately notified the Union that it could not pay the inordinate number of requests as it had in the past. Respondent says that it received 60 requests for vacation pay under this plan, whereas in the past it had received 5–15 such requests. When Surratt, the union business agent, was notified of this, he and the plant manager had several meetings in which they discussed the employer's financial inability to pay the vacation requests prior to August 1.

Several options were discussed. Among them total payment to some of those requesting them and a breakdown of those requesting to pay 1 day each payday. James Surratt, the B.A. considered all of these. There were at least three negotiating sessions held, however, no agreement was reached.

Finally, about May 9, the employer posted a notice to employees; advising them that the payments would be made—one day at a time—on alternate paydays or in a lump sum on August 1, 1996.

The Union, thereafter filed charges alleging that because the total vacation payment was not made prior to June 30, 1996. Crown had violated the contract and Section 8(a)(1), (5) and Section 8(d) of the Act for failure to notify, negotiate, and bargain with the Union over the change of the vacation payment schedule.

First, Crown notified the Union immediately that because of its precarious financial condition it would not be able to pay the vacation pay as usual. Thereafter the plant manager and the union business agent met on several occasion to negotiate a way of paying the pay. A number of options were considered including some by Surratt, the union B.A. and the plant manager—an option was presented by Surratt to pay some of the 60 employees who had requested vacation pay each week, but was refused by Respondent because of its financial condition. There were also discussions concerning paying each of the 60 1 day a week during each pay period. At that time Respondent rejected this for financial reasons. Neither the Government nor the Union contends that STP was acting in bad faith or to discredit the Union.

Analysis

Based upon the following, I find that the nature of Crown's alleged unfair labor practices, id altering or changing its vacation pay policy did not have a causal relationship with the Union's loss of majority support.

In *Master Slack Corp.*, 271 NLRB 78 (1984), the Board adopted a 4-factor test to determine whether there exists a causal relationship between unremedied unfair labor practices and a union's loss of majority support:

> (1) the length of time between the unfair labor practices and the withdrawal (or refusal) of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the Union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

Here, Crown's alleged unfair labor practice; its' inability to pay all requested vacation pay prior to June 30, but instead did not complete said payments for a month, until August 1, is not of the nature of an illegal act having a detrimental or lasting effect on employees. Neither does it have a tendency to cause disaffection from the Union nor have an effect on employee morale, organizational activities, or membership in the Union.

There is no contention by the Government or the Union that Crown could have, from its financial ability, made the vacation payments earlier than it did. Nor do they contend that its failure to do so arose from antiunion animus or to discredit the Union.

There is not a scintilla of evidence that either Crown or STP had any animus toward the Union or engaged in said conduct to rid itself of the Union.

CONCLUSIONS OF LAW

1. Respondents Crown and STP are employers within the meaning of Section 2(2), (6), and (7) of the Act as admitted.

2. The Union and its predecessor are labor organizations within the meaning of Section 2(5) of the Act as admitted.

3. Respondent Crown did not violate Section 8(a)(1), (5) or Section 8(d) as alleged, and even if there was a technical violation, beyond the control of Crown it would not effectuate the purposes of the Act to issue a remedial Order herein.

[Recommended Order omitted from publication.]